

AMENDED IN SENATE AUGUST 21, 2006

AMENDED IN SENATE JUNE 29, 2006

AMENDED IN ASSEMBLY JANUARY 26, 2006

AMENDED IN ASSEMBLY JUNE 13, 2005

AMENDED IN ASSEMBLY JUNE 1, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1029

Introduced by Assembly Member Jerome Horton

February 22, 2005

An act to amend Sections 64, 480.2, 483, and 532 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1029, as amended, Jerome Horton. Property taxation.

The California Constitution generally limits ad valorem taxes on real property to 1% of the full cash value of that property. For purposes of this limitation, “full cash value” is defined as the assessor’s valuation of real property as shown on the 1975–76 tax bill under “full cash value” or, thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. Existing property tax law specifies those circumstances in which the transfer of ownership interests in a corporation, partnership, limited liability company, or other legal entity results in a change in ownership of the real property owned by that entity, and requires a person or entity that obtains a controlling or

majority ownership interest in a legal entity, or an entity that makes specified transfers of ownership interests in the legal entity, to file a change in ownership statement, as specified, with the State Board of Equalization within 45 days of specified transactions, or whenever requested by the board. Existing law imposes a penalty of 10% of the taxes owed to the county on a parcel of real property if an assessee fails to file a change in ownership statement with the board within 45 days of a board request.

This bill would modify the provisions of that statement to specify that the county assessor shall estimate the value of, and reassess, the real property owned by an entity in its jurisdiction if the entity fails to respond to a county assessor's request for information and the assessor has information that a change in ownership has occurred, as specified. This bill would also authorize a county board of supervisors to abate, and to authorize the county assessor to abate, the 10% penalty if the failure to file the change in ownership statement within the prescribed time period was due to reasonable cause, the person or legal entity has subsequently filed a change of ownership statement with the State Board of Equalization, as provided, and the person or legal entity has filed with the county board of supervisors a written application for abatement of the penalty no later than 60 days after the date on which the person or legal entity was notified of the penalty, as provided. This bill would also define "reasonable cause" for purposes of these provisions.

Existing law requires the Franchise Tax Board to include specified questions on the income tax returns of specified entities regarding changes in ownership of the real property owned by the entity and requires the Franchise Tax Board to notify the State Board of Equalization if an entity answers "yes" to these questions.

This bill would delete the specified questions and would instead require the Franchise Tax Board to include general questions on these income tax returns asking whether a change in control or change in ownership has occurred and whether the entity owns real property in the state.

Existing property tax law provides for escape assessments to be made on property outside the regular assessment period and requires that certain notices, in a form prescribed by the State Board of Equalization, of those assessments be given to assessees.

This bill would clarify that, in the case where property has escaped taxation, in whole or in part, or has been underassessed, following a

change in ownership or change in control, as provided, an escape assessment may be made for each year in which the property escaped taxation or was underassessed, if a change in ownership statement, as required, was not filed within 45 days of a written request by the State Board of Equalization.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 64 of the Revenue and Taxation Code is
2 amended to read:

3 64. (a) Except as provided in subdivision (i) of Section 61
4 and subdivisions (c) and (d) of this section, the purchase or
5 transfer of ownership interests in legal entities, such as corporate
6 stock or partnership or limited liability company interests, shall
7 not be deemed to constitute a transfer of the real property of the
8 legal entity. This subdivision is applicable to the purchase or
9 transfer of ownership interests in a partnership without regard to
10 whether it is a continuing or a dissolved partnership.

11 (b) Any corporate reorganization, where all of the corporations
12 involved are members of an affiliated group, and that qualifies as
13 a reorganization under Section 368 of the United States Internal
14 Revenue Code and that is accepted as a nontaxable event by
15 similar California statutes, or any transfer of real property among
16 members of an affiliated group, or any reorganization of farm
17 credit institutions pursuant to the federal Farm Credit Act of
18 1971 (Public Law 92-181), as amended, shall not be a change of
19 ownership. The taxpayer shall furnish proof, under penalty of
20 perjury, to the assessor that the transfer meets the requirements of
21 this subdivision.

22 For purposes of this subdivision, "affiliated group" means one
23 or more chains of corporations connected through stock
24 ownership with a common parent corporation if both of the
25 following conditions are met:

26 (1) One hundred percent of the voting stock, exclusive of any
27 share owned by directors, of each of the corporations, except the

1 parent corporation, is owned by one or more of the other
2 corporations.

3 (2) The common parent corporation owns, directly, 100
4 percent of the voting stock, exclusive of any shares owned by
5 directors, of at least one of the other corporations.

6 (c) (1) When a corporation, partnership, limited liability
7 company, other legal entity, or any other person obtains control
8 through direct or indirect ownership or control of more than 50
9 percent of the voting stock of any corporation, or obtains a
10 majority ownership interest in any partnership, limited liability
11 company, or other legal entity through the purchase or transfer of
12 corporate stock, partnership, or limited liability company interest,
13 or ownership interests in other legal entities, including any
14 purchase or transfer of 50 percent or less of the ownership
15 interest through which control or a majority ownership interest is
16 obtained, the purchase or transfer of that stock or other interest
17 shall be a change of ownership of the real property owned by the
18 corporation, partnership, limited liability company, or other legal
19 entity in which the controlling interest is obtained.

20 (2) On or after January 1, 1996, when an owner of a majority
21 ownership interest in any partnership obtains all of the remaining
22 ownership interests in that partnership or otherwise becomes the
23 sole partner, the purchase or transfer of the minority interests,
24 subject to the appropriate application of the step-transaction
25 doctrine, shall not be a change in ownership of the real property
26 owned by the partnership.

27 (d) If property is transferred on or after March 1, 1975, to a
28 legal entity in a transaction excluded from change in ownership
29 by paragraph (2) of subdivision (a) of Section 62, then the
30 persons holding ownership interests in that legal entity
31 immediately after the transfer shall be considered the “original
32 coowners.” Whenever shares or other ownership interests
33 representing cumulatively more than 50 percent of the total
34 interests in the entity are transferred by any of the original
35 coowners in one or more transactions, a change in ownership of
36 that real property owned by the legal entity shall have occurred,
37 and the property that was previously excluded from change in
38 ownership under the provisions of paragraph (2) of subdivision
39 (a) of Section 62 shall be reappraised.

1 The date of reappraisal shall be the date of the transfer of the
2 ownership interest representing individually or cumulatively
3 more than 50 percent of the interests in the entity.

4 A transfer of shares or other ownership interests that results in
5 a change in control of a corporation, partnership, limited liability
6 company, or any other legal entity is subject to reappraisal as
7 provided in subdivision (c) rather than this subdivision.

8 (e) (1) To assist in the determination of whether a change of
9 ownership has occurred under subdivisions (c) and (d), the
10 Franchise Tax Board shall include a question on returns for
11 partnerships, banks, and corporations (except tax-exempt
12 organizations) asking (A) if a change in control or a change in
13 ownership, as described in this section, of the entity has occurred,
14 and (B) if the entity owns real property in California.

15 (2) If the entity responds affirmatively to either of the
16 questions described in paragraph (1), then the Franchise Tax
17 Board shall furnish the names and addresses of that entity to the
18 State Board of Equalization.

19 SEC. 2. Section 480.2 of the Revenue and Taxation Code is
20 amended to read:

21 480.2. (a) Whenever there is a change in ownership of any
22 corporation, partnership, limited liability company, or other legal
23 entity, as defined in subdivision (d) of Section 64, a signed
24 change in ownership statement as provided in subdivision (b)
25 shall be filed by such corporation, partnership, limited liability
26 company, or other legal entity with the board at its office in
27 Sacramento. The statement shall list all counties in which the
28 corporation, partnership, limited liability company, or legal entity
29 owns real property.

30 (b) The change in ownership statement required pursuant to
31 subdivision (a) shall be declared to be true and under penalty of
32 perjury and shall give such information relative to the ownership
33 interest acquisition transaction as the board shall prescribe after
34 consultation with the California Assessors' Association. The
35 information shall include, but not be limited to, a description of
36 the property owned by the corporation, partnership, limited
37 liability company, or other legal entity, the parties to the
38 transaction, the date of the ownership interest acquisition, and a
39 listing of the "original coowners" of the corporation, partnership,
40 limited liability company, or other legal entity prior to the

1 transaction. The change in ownership statement shall not include
2 any question which is not germane to the assessment function.
3 The statement shall contain a notice that is printed, with the title
4 in at least 12-point boldface type and the body in at least 8-point
5 boldface type, in the following form:

6
7 “Important Notice”
8

9 “The law requires any corporation, partnership, limited liability
10 company, or other legal entity owning real property in California
11 subject to local property taxation and transferring shares or other
12 ownership interest in such legal entity which constitute a change
13 in ownership pursuant to subdivision (d) of Section 64 of the
14 Revenue and Taxation Code to complete and file a change in
15 ownership statement with the State Board of Equalization at its
16 office in Sacramento. The change in ownership statement must
17 be filed within 45 days from the date that shares or other
18 ownership interests representing cumulatively more than 50
19 percent of the total control or ownership interests in the entity are
20 transferred by any of the original coowners in one or more
21 transactions. The law further requires that a change in ownership
22 statement be completed and filed whenever a written request is
23 made therefor by the State Board of Equalization, regardless of
24 whether a change in ownership of the legal entity has occurred.
25 The failure to file a change in ownership statement within 45
26 days from the date of a written request by the Board of
27 Equalization results in a penalty of 10 percent of the taxes
28 applicable to the new base year value reflecting the change in
29 ownership of the real property owned by the corporation,
30 partnership, limited liability company, or legal entity (or 10
31 percent of the current year’s taxes on that real property if no
32 change in ownership occurred). This penalty will be added to the
33 assessment roll and shall be collected like any other delinquent
34 property taxes, and be subject to the same penalties for
35 nonpayment. If, after written request by the assessor, the
36 corporation, partnership, limited liability company, or other legal
37 entity, required by law to file the change in ownership statement,
38 ~~fails to comply with any law for furnishing~~ *furnish* required
39 information and the assessor has information that a change in
40 ownership has occurred, the assessor, based upon information in

1 his or her possession, shall estimate the value of the property and,
2 based upon this estimate, promptly assess the property.”

3 (c) In the case of a corporation, the change in ownership
4 statement shall be signed either by an officer of the corporation
5 or an employee or agent who has been designated in writing by
6 the board of directors to sign such statements on behalf of the
7 corporation. In the case of a partnership, limited liability
8 company, or other legal entity, the statement shall be signed by
9 an officer, partner, manager, or an employee or agent who has
10 been designated in writing by the partnership, limited liability
11 company, or legal entity.

12 (d) No person or entity acting for or on behalf of the parties to
13 a transfer of real property shall incur liability for the
14 consequences of assistance rendered to the transferee in
15 preparation of any change in ownership statement, and no action
16 may be brought or maintained against any such person or entity
17 as a result of such assistance.

18 Nothing in this section shall create a duty, either directly or by
19 implication, that such assistance be rendered by any person or
20 entity acting for or on behalf of parties to a transfer of real
21 property.

22 (e) The board or assessors may inspect any and all records and
23 documents of a corporation, partnership, limited liability
24 company, or legal entity to ascertain whether a change in
25 ownership as defined in subdivision (d) of Section 64 has
26 occurred. The corporation, partnership, limited liability company,
27 or legal entity shall upon request, make such documents available
28 to the board *or assessors* during normal business hours.

29 SEC. 3. Section 483 of the Revenue and Taxation Code is
30 amended to read:

31 483. (a) (1) If the assessee establishes to the satisfaction of
32 the county board of supervisors that the failure to file the change
33 in ownership statement within the time required by subdivision
34 (a) of Section 482 was due to reasonable cause and not due to
35 willful neglect, and has filed the statement with the assessor, the
36 board of supervisors may order the penalty abated, provided the
37 assessee has filed with the board of supervisors a written
38 application for abatement of the penalty no later than 60 days
39 after the date on which the assessee was notified of the penalty.

(2) If the penalty is abated it shall be canceled or refunded in the same manner as an amount of tax erroneously charged or collected.

(b) (1) The provisions of subdivision (a) shall not apply in any county in which the board of supervisors adopts a resolution to that effect. In that county the penalty provided for in subdivision (a) of Section 482 shall be abated if the assessee files the change of ownership statement with the assessor no later than 60 days after the date on which the assessee was notified of the penalty.

(2) If the penalty is abated it shall be canceled or refunded in the same manner as an amount of tax erroneously charged or collected.

(c) (1) If a person or legal entity establishes to the satisfaction of the county board of supervisors that the failure to file the change in ownership statement within the time required by subdivision (b) of Section 482 was due to reasonable cause and not due to willful neglect, and has filed the statement with the State Board of Equalization, the county board of supervisors may order that the penalty be abated, provided the person or legal entity has filed with the county board of supervisors a written application for abatement of the penalty no later than 60 days after the date on which the person or legal entity was notified of the penalty pursuant to Section 534.

(2) A county board of supervisors may adopt an ordinance or resolution authorizing the assessor to abate the penalty provided for in subdivision (b) of Section 482.

(3) If the penalty is abated, it shall be canceled or refunded in the same manner as an amount of tax erroneously charged or collected.

(d) For purposes of this section, “reasonable cause” includes, but is not limited to, all of the following:

(1) The occurrence of an emergency, as described in Section 8558 of the Government Code, that caused the person’s failure to make a timely remittance.

(2) A natural disaster or other catastrophe directly affecting the business operations of the person that caused the person’s failure to make a timely remittance.

(3) The State Board of Equalization failed to send returns or other information to the correct address of record, that caused the person’s failure to make a timely remittance.

1 SEC. 4. Section 532 of the Revenue and Taxation Code is
2 amended to read:

3 532. (a) Except as provided in subdivision (b), any
4 assessment made pursuant to either Article 3 (commencing with
5 Section 501) or this article shall be made within four years after
6 July 1 of the assessment year in which the property escaped
7 taxation or was underassessed.

8 (b) (1) Any assessment to which the penalty provided for in
9 Section 504 must be added shall be made within eight years after
10 July 1 of the assessment year in which the property escaped
11 taxation or was underassessed.

12 (2) Any assessment resulting from an unrecorded change in
13 ownership for which either a change in ownership statement, as
14 required by Section 480, or a preliminary change in ownership
15 report, as required by Section 480.3, is not timely filed with
16 respect to the event giving rise to the escape assessment or
17 underassessment shall be made within eight years after July 1 of
18 the assessment year in which the property escaped taxation or
19 was underassessed. For purposes of this paragraph, an
20 “unrecorded change in ownership” means a deed or other
21 document evidencing a change in ownership that was not filed
22 with the county recorder’s office at the time the event took place.

23 (3) Notwithstanding paragraphs (1) and (2), in the case where
24 property has escaped taxation, in whole or in part, or has been
25 underassessed, following a change in ownership or change in
26 control and either the penalty provided for in Section 503 must
27 be added or a change in ownership statement, as required by
28 Section 480.1 or 480.2 was not filed timely with respect to the
29 event giving rise to the escape assessment or underassessment, an
30 escape assessment shall be made for each year in which the
31 property escaped taxation or was underassessed.

32 (4) For purposes of this subdivision, “timely” means 45 days
33 from the date of a written request by the State Board of
34 Equalization.

35 (c) For purposes of this section, “assessment year” means the
36 period defined in Section 118.

37 SEC. 5. This act is an urgency statute necessary for the
38 immediate preservation of the public peace, health, or safety
39 within the meaning of Article IV of the Constitution and shall go
40 into immediate effect. The facts constituting the necessity are:

- 1 In order to ensure that this act applies to property assessments
- 2 for the 2006–07 fiscal year as soon as possible, it is necessary
- 3 that this act take effect immediately.

O